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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No.: 2:23-cv-01049-JWH-KES
(Lead Case)
Case No.: 2:23-cv-01050-JWH-KES
(Related Case)

[Assigned to the Honorable John W.
Holcomb]

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff,

v.

COMCAST CORPORATION, *et al.*,

Defendants.

**ENTROPIC COMMUNICATIONS,
LLC'S OPPOSITION TO
COMCAST DEFENDANTS'
MOTION TO DISMISS SECOND
AMENDED COMPLAINT UNDER
FED. R. CIV. P. 12(b)(1) AND
12(b)(6)**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Entropic has followed the Court’s guidance in its Order (1049 DE 120) and added specific and voluminous factual allegations to the Second Amended Complaint (“SAC”) regarding the close relationship and collaboration between Charter and Comcast in the cable industry. *See* 1049 DE 142-1 (“SAC”) ¶¶ 71–94. These allegations amply support (and render more than plausible) Entropic’s ultimate factual allegations that Comcast was aware of the prior litigation against Charter regarding the Asserted Patents, analyzed the infringement claims in that litigation, and concluded that Comcast infringes the Asserted Patents in substantially the same or identical manner as that alleged in Charter. Indeed, Entropic even specifically alleges that Comcast sought indemnification for Entropic’s claims and contacted the RPX industry group regarding Entropic’s claims *before Entropic even filed suit against Comcast*. *Id.* ¶ 97. Entropic’s allegations, following the Court’s guidance, are more than sufficient.

Comcast, however, remains steadfast in its desire to win this case before any discovery can uncover the truth. Comcast attacks Entropic’s well-pleaded allegations with a new legal argument—proposing that willful infringement can arise only where Charter *itself* informed Comcast of the infringement, rather than Comcast having become aware on its own. This withstands neither logic nor precedent. There is no limitation in the law as to *how* the requisite state of mind arose. To propound the argument at all, Comcast must argue that the holding of *Core Optical Techs., LLC v. Juniper Networks Inc.*, 562 F. Supp. 3d 376 (N.D. Cal. 2021) is somehow strictly limited with respect to how the willful infringer obtained its awareness. But as the Court itself recognized in its Order, a tight-knit industry increases the plausibility of allegations that players within that industry would be aware of lawsuits against their competitors. As discussed further below, that is exactly what Entropic alleges.

In addition to these new allegations, however, the SAC and its accompanying supplement provide three further reasons to deny Comcast’s motion. First, the SAC and

1 supplement add detailed factual allegations concerning Comcast’s willful infringement
2 of the MoCA patents. Specifically, the SAC alleges that Entropic Inc., the then-patent
3 owner, sent an email to the MoCA Board—including Comcast—informing them that
4 the ’518 Patent is essential to the MoCA standard, a standard Comcast was intimately
5 involved in developing and promoting, and has used long since that time, continuing
6 through today, despite knowing that the ’518 Patent is essential to practicing that
7 standard. SAC ¶¶ 137–40. At a minimum, these allegations establish that Comcast was
8 willfully blind and knew of a high risk that it was infringing the ’518 Patent, as well as
9 the ’759 Patent (a continuation of the ’518). *Id.* ¶¶ 141–42.

10 Second, Entropic’s SAC and supplement include ample allegations of post-suit
11 willful infringement based on Comcast’s detailed knowledge of the Asserted Patents
12 and its infringement through the Complaints, attached claim charts, and subsequent
13 infringement contentions. *Id.* ¶¶ 162–81. While Comcast urges that this Court should
14 ignore such conduct and hold that *all* post-suit willful infringement is barred, the
15 majority (and more persuasive and judicially efficient) view is that willful infringement
16 may reach all conduct, including post-suit conduct.

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 In sum, Entropic’s new allegations clear the plausibility hurdle for willful patent
2 infringement as to all Asserted Patents, and this case should now proceed to discovery.

3 [REDACTED]
4 [REDACTED] Entropic respectfully
5 therefore requests the Court deny Comcast’s motion.

6 **II. JUDICIAL STANDARD**

7 **A. Rule 12(b)(6) of the Federal Rules of Civil Procedure**

8 Dismissal pursuant to Rule 12(b)(6) is based on a determination that the claim,
9 as pled, has no substantive merit. The barrier to dismissing a claim at this stage, with
10 no discovery, is correspondingly very high. At the pleading stage, a court must “accept
11 all factual allegations in the complaint as true and construe the pleadings in the light
12 most favorable to the nonmoving party.” *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d
13 1028, 1029–30 (9th Cir. 2009) (citation and quotation omitted). A complaint need only
14 “contain[] ‘sufficient factual matter, accepted as true, to state a claim of relief that is
15 plausible on its face.’” *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012)
16 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Thus, “[i]f there are two alternative
17 explanations, one advanced by [a] defendant and the other advanced by [a] plaintiff,
18 both of which are plausible, [a] plaintiff’s complaint survives a motion to dismiss under
19 Rule 12(b)(6).” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

20 **B. Rule 12(b)(1) of the Federal Rules of Civil Procedure**

21 Subject matter jurisdiction challenges arise under Rule 12(b)(1). Jurisdiction is a
22 question of whether the Court has the **authority** to hear a claim. In contrast to Rule
23 12(b)(6), the **merits** of a claim are irrelevant to the question of **authority**—the Court
24 either has authority, or lacks it, on the basis of the claim itself, not on its eventual
25 outcome. Because jurisdiction invokes the Court’s authority to make any determination
26 at all, the standards are slightly relaxed compared to challenges under Rule 12(b)(6).
27 “A jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the
28 pleadings or by presenting extrinsic evidence.” *Warren v. Fox Fam. Worldwide, Inc.*,

328 F.3d 1136, 1139 (9th Cir. 2003). But the safeguards applicable to the Rule 12(b)(6) context apply also to Rule 12(b)(1) where the jurisdictional challenge inextricably implicates the merits of a claim: “[w]here jurisdiction is intertwined with the merits, [the Court] must ‘assume the truth of the allegations in the complaint . . . unless controverted by undisputed facts in the record.’” *Warren*, 328 F.3d at 1139 (quoting *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987)).

III. ARGUMENT

A. The SAC sufficiently alleges that Comcast willfully infringed each of the Asserted Patents.

1. The allegations regarding Comcast’s post-suit conduct are sufficient to plead Comcast’s willful infringement.

Comcast does not contest that Entropic’s factual allegations of post-suit conduct sufficiently allege that Comcast had post-suit knowledge of the Asserted Patents and had specific, detailed knowledge that it was infringing (and continues to infringe) these patents. Nor could it—Entropic’s Complaints provided detailed notice of the Asserted Patents and Comcast’s infringement, including attached claim charts. SAC ¶¶ 165–74, *see generally* 1050 DE 1, DE 63. Even if that were insufficient, Entropic has provided substantial and detailed infringement contentions for each Asserted Patent that further provided notice of Comcast’s infringement of the Asserted Patents. *Id.* ¶¶ 175–81. Rather than contest the sufficiency of these allegations, Comcast instead asserts that: (1) the VSA prohibited the original Complaint in this case, so it cannot serve to provide Comcast with notice of its willful infringement; and (2) the Court should adopt the minority position as to post-suit willful infringement and find that it is categorically insufficient. Opp. at 21:16–264. Both arguments lack merit.

First, whether the VSA was breached or contravened by Entropic’s original Complaint does not erase that Complaint from history nor Comcast’s corporate mind. Comcast indisputably received the original Complaint and accompanying claim charts, and reviewed those materials. *See* 1050 DE 1, 15-17, 63 Comcast does not contest that

1 if Entropic had sent the Complaints and infringement contentions to Comcast without
2 filing a lawsuit that it would have been sufficient to allege willful infringement. Instead,
3 Comcast argues that the fact that Entropic filed the lawsuit somehow nullifies
4 Comcast's knowledge of its infringement and forever protects Comcast from willful
5 infringement. As Comcast alludes in its brief, Comcast's argument may implicate a
6 breach of contract,¹ but it does not eliminate Comcast's knowledge of both the Asserted
7 Patents and Comcast's specific and knowing infringement thereof. And indeed, the
8 contract itself does not contain the language Comcast now wishes to insert—delineating
9 between pre-suit and post-suit willfulness—and Comcast cannot rewrite the VSA to
10 invent such a distinction. *See Collins & Aikman Prod. Co. v. Sermatech Eng'g Grp.,*
11 *Inc.*, 746 N.Y.S.2d 698, 700 (2002) (“[C]ovenants not to sue, when considered purely
12 defensively, are narrowly construed because they have the effect of exculpating a party
13 from its own wrongdoing.”).

14 Comcast indisputably has had detailed knowledge of the Asserted Patents and
15 how it is infringing the Asserted Patents on an ongoing basis since at least the filing of
16 the original Complaint and subsequent service of infringement contentions (each of
17 which independently provided notice). SAC ¶¶ 162–79. Despite this, Comcast has
18 continued to infringe the Asserted Patents. *Id.* ¶¶ 180–81. This is paradigmatic willful
19 patent infringement, which is specifically carved out in the VSA even under Comcast's
20 own interpretation. 1050 DE 75-2 (“VSA”) § 7.3. Whether the Court had subject matter
21 jurisdiction over the Original Complaint is entirely irrelevant to Comcast's knowledge
22 and state of mind concerning its continued infringement of the Asserted Patents. This
23 result also comports with the language of the VSA itself, which is agnostic as to the
24 method by which Comcast obtains its knowledge and begins its willful infringement.
25 *Id.*

26
27
28 ¹ Comcast's assertion that the Original Complaint breached the covenant also is without merit—the Original Complaints alleged willful patent infringement of all asserted patents. *See* 1048 DE 1; 1050 DE 1.

1 Second, Comcast’s arguments that this Court should categorically reject post-suit
2 willfulness are based on a **minority** view—both nationally and within this District—
3 that is unpersuasive and contrary to policy. This Court should instead adopt the **majority**
4 view that post-filing conduct may be the basis for willful infringement. *See*
5 *Vaporstream, Inc. v. Snap Inc.*, 2020 WL 136591, at *20 (C.D. Cal. Jan. 13, 2020) (“[A]
6 claim for willful infringement can be based on post-filing conduct alone.”); *TeleSign*
7 *Corp. v. Twilio, Inc.*, 2015 WL 12765482, at *10 (C.D. Cal. Oct. 16, 2015) (denying
8 motion to dismiss willful infringement allegations based on post-filing notice alone);
9 *MyMedicalRecords, Inc. v. Jardogs, LLC*, 1 F. Supp. 3d 1020, 1026 (C.D. Cal. 2014)
10 (“A defendant should not be able to escape liability for postfiling infringement when
11 the complaint manifestly places the defendant on notice that it allegedly infringes the
12 patents-in-suit.”); *Apple Inc. v. Samsung Elecs. Co.*, 258 F. Supp. 3d 1013, 1027 (N.D.
13 Cal. 2017) (“[P]ost-filing conduct alone can serve as the basis of a jury’s willfulness
14 finding and an award of enhanced damages.”); *Monolithic Power Sys., Inc. v. Silergy*
15 *Corp.*, 127 F. Supp. 3d 1071, 1076 (N.D. Cal. 2015) (“[A] plaintiff can state a claim for
16 post-filing willful infringement so long as the plaintiff alleges, in an amended complaint
17 and with sufficient particularity, that there is an objectively high risk the defendant is
18 continuing to infringe and the defendant knows or should know of that objectively high
19 risk.”); *DermaFocus LLC v. Ulthera, Inc.*, 201 F. Supp. 3d 465, 473 (D. Del. 2016)
20 (upholding willfulness claim based on allegations of post-filing conduct); *Simplivity*
21 *Corp. v. Springpath, Inc.*, 2016 WL 5388951, at *18 (D. Mass. July 15, 2016) (same).²

22 The position advanced by Comcast would permit defendants to escape liability
23 for willful infringement for conduct that occurs after the plaintiff files its complaint—a

24
25 ² *See also T-Rex Prop. AB v. Regal Entm't Grp.*, 2017 WL 4229372, at *8 (E.D. Tex.
26 Aug. 31, 2017); *Zimmer Surgical, Inc. v. Stryker Corp.*, 2017 WL 3736750, at *2 (D.
27 Del. Aug. 30, 2017); *Finjan, Inc. v. Eset, LLC*, 2017 WL 1063475, at *4 (S.D. Cal.
28 March 21, 2017); *Raytheon Co. v. Cray, Inc.*, 2017 WL 1362700, at *5 (E.D. Tex.
March 13, 2017); *Huawei Techs. Co. v. T-Mobile US, Inc.*, 2017 WL 1129951, at *4
(E.D. Tex. Feb. 21, 2017); *Simplivity Corp. v. Springpath, Inc.*, 2016 WL 5388951, at
*18 (D. Mass. July 15, 2016); *DermaFocus LLC v. Ulthera, Inc.*, 201 F. Supp. 3d 465,
473 (D. Del. 2016).

1 result directly contrary to the Supreme Court’s holding that “Section 284 allows district
2 courts to punish the **full range** of culpable behavior.” *Halo Elecs., Inc. v. Pulse Elecs.,*
3 *Inc.*, 579 U.S. 93, 106 (2016) (emphasis added); *see also MyMedicalRecords, Inc.*, 1 F.
4 Supp. 3d at 1026 (“[I]f a plaintiff [] is able to establish the defendant’s knowledge of
5 the alleged infringement based on a prior, though superseded, complaint, the defendant
6 should not be able to escape liability for conduct occurring after the plaintiff files its
7 complaint.”).

8 Comcast’s arguments, and the cases quoted by Comcast in support, are rooted in
9 a fundamental error conflating willful patent infringement and enhanced damages under
10 Section 284. They are not the same thing. To plead willful patent infringement, a
11 patentee need only prove knowledge of the patent and knowledge of infringement.
12 *Arctic Cat Inc. v. Bombardier Rec. Prod. Inc.*, 876 F.3d 1350, 1371 (Fed. Cir. 2017).
13 Enhanced damages under Section 284, however, requires more and is “generally
14 reserved for egregious cases of culpable behavior” that has “been variously described
15 in [Federal Circuit] cases as willful, wanton, malicious, bad-faith, deliberate,
16 consciously wrongful, flagrant, or—indeed—characteristic of a pirate.” *Halo*, 579 U.S.
17 at 103–04. In sum, willful patent infringement is “a necessary but not necessarily
18 sufficient predicate, for a finding of egregious misconduct and enhanced damages.”
19 *Sonos, Inc.*, 591 F. Supp. 3d at 643 (citing *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d
20 1295, 1310 (Fed. Cir. 2019)). “Since *Halo*, the Court of Appeals for the Federal Circuit
21 has explained that egregiousness is for the district judge to decide *after* the verdict. *Id.*
22 (citing and quoting *Eko Brands, LLC v. Adrian Rivera Maynez Enters., Inc.*, 946 F.3d
23 1367, 1378 (Fed. Cir. 2020)). At the pleading stage, this means that “once willfulness
24 is adequately pled, the complaint need not go further and specify the further aggravating
25 circumstances warranting enhanced damages.” *Id.* at 644.

26 Understanding this distinction lays bare the irrelevance of Comcast’s assertion
27 that a patentee would “always [be able] to file an amended complaint to assert
28 willfulness based on knowledge gleaned from the earlier complaint.” Opp. at 24:9–10.

1 A defendant with a good faith belief in its defenses has nothing to fear from willful
2 infringement because it cannot be subject to enhanced damages under Section 284 under
3 *Halo*. But a defendant who reviews a complaint, determines a high risk that it is
4 infringing the asserted patent, and lacks any good faith defenses to infringement such
5 that its conduct is egregious under *Halo*, **and yet continues to infringe**, rightfully should
6 be held accountable. Comcast’s view is that—even if a judge determines after trial that
7 a defendant’s conduct was egregious—such a defendant nonetheless should escape
8 consequences for its egregious conduct merely because its notice comes via a complaint.
9 That result is contrary to policy and the plain language of Section 284.

10 Even were this Court to adopt the minority view, however, Comcast’s argument
11 **still** fails because of an exception for plaintiffs like Entropic. That exception applies
12 where “a patentee that neither practices its invention nor directly competes with the
13 alleged infringer may be excused from the injunction requirement.” *Pacing Techs., LLC*
14 *v. Garmin Intern., Inc.*, 2013 WL 444642, at *3 n.3 (S.D. Cal. Feb. 5, 2013). This is
15 because the primary policy concerns animating the minority view—that a patentee
16 should seek a preliminary injunction to bar ongoing infringement rather than pursue
17 willful infringement—is absent for plaintiffs such as Entropic who are categorically
18 barred from obtaining such injunctive relief. *Id.* Entropic thus fits squarely within this
19 explicit exception to the minority rule Comcast seeks adherence to and its argument
20 fails even if its unpersuasive position were adopted.

21 In sum, the Court should reject Comcast’s arguments that seek to nullify
22 Entropic’s well-pled factual allegations that Comcast obtained knowledge of both the
23 Asserted Patents and its specific infringement of those patents through the Complaints
24 and infringement contentions in this case, and yet has continued to infringe, constituting
25 willful patent infringement no later than when Comcast obtained such knowledge. This
26 Court should adopt the majority view regarding post-suit willful patent infringement,
27 hold that this Court maintains subject matter jurisdiction over these claims, and deny
28 Comcast’s motion, permitting the case to proceed to discovery.

1 **2. The allegations regarding Comcast’s pre-suit conduct are**
2 **sufficient to plead Comcast’s willful infringement and permit**
3 **discovery.**

4 Entropic has sufficiently pled willful infringement through additional facts
5 alleged in the SAC regarding Comcast’s knowledge of the Charter litigation and close
6 relationship with Charter. *See Core Optical Techs., LLC v. Juniper Networks Inc.*, 562
7 F. Supp. 3d 376, 381 (N.D. Cal. 2021) (willful infringement may be established if the
8 alleged infringer learned of the patent in a previous lawsuit). As an initial matter,
9 Comcast’s suggestion that these allegations are not specific or narrow enough flies in
10 the face of the well-settled standard for pleading willfulness. Courts have repeatedly
11 recognized that at the early pleading stage, a party cannot possibly know the full extent
12 of a party’s willful infringement³—because that information often is within the sole
13 possession of the infringer—so allegations of willfulness are to be read holistically and
14 in the light most favorable to the plaintiff. *Warn Indus., Inc. v. Agency 6 Inc.*, 660 F.
15 Supp. 3d 924, 935 (E.D. Cal. 2023) (finding plaintiff sufficiently pled willful
16 infringement by alleging that defendant was aware of the pre-publication grant of
17 asserted patent and received cease and desist letter from plaintiff); *see also Sonos, Inc.*,
18 591 F. Supp. 3d at 644–45 (“The full extent of egregious behavior is . . . unknown at
19 the pleading stage. It would be unreasonable to expect patent plaintiffs to be in a
20 position to plead the full extent of egregious misconduct.”).

21 To demand that a party identify with immense specificity the particulars of when,
22 where, and how the defendant became aware of its infringement without **any**
23 **discovery**—precisely what Comcast urges here—would convert the pleading stage into
24 summary judgment. Worse, it would offer willful infringers ample opportunity to avoid
25 discovery merely through successfully hiding enough of its conduct, which is precisely
26 what Comcast is doing now in refusing to produce **any** documents on its own VSA

27
28 ³ Yet another reason the VSA is properly considered a defense, not a bar to suit. *Air Products and Chemicals, Inc. v. Reichhold Chemicals, Inc.*, 755 F.2d 1559, 1563–64 (Fed. Cir. 1985); *Pixton v. B & B Plastics, Inc.*, 291 F.3d 1324, 1327 (Fed. Cir. 2002).

1 defense or willfulness. *See* DE 119. This is not what the law requires. Instead, the law
2 applies a lenient pleading standard for willful infringement that merely requires
3 plausible allegations of the defendant’s knowledge of the asserted patents and its
4 infringement of those patents. *Arctic Cat Inc.*, 876 F.3d at 1371; *Warn Indus., Inc. v.*
5 *Agency 6 Inc.*, 660 F. Supp. 3d 924, 935 (E.D. Cal. 2023) (finding plaintiff sufficiently
6 pled willful infringement by alleging that defendant was aware of the pre-publication
7 grant of asserted patent and received cease and desist letter from plaintiff). This is
8 exactly what Entropic has done—in spades.

9 Similarly, Comcast incorrectly suggests that allegations that the Court previously
10 found insufficient on their own must now be disregarded for all time. To the contrary,
11 the Federal Circuit has “stated many times that a number of factors enter into a
12 willfulness determination and, as such, the issue is properly resolved by evaluating the
13 totality of the surrounding circumstances.” *Graco, Inc. v. Binks Mfg. Co.*, 60 F.3d 785,
14 792 (Fed. Cir. 1995). Thus, the fact that certain allegations may have been insufficient
15 on their own to establish willfulness does not mean that those allegations are now
16 stricken from the complaint for all time. The totality of Entropic’s allegations is more
17 than sufficient to plead Comcast’s willful infringement, particularly given the addition
18 of new allegations in combination with a wealth of facts demonstrating various methods
19 of knowledge and misconduct. *See* SAC ¶¶ 31-188.

20 In Entropic’s SAC, Entropic alleges that Comcast had knowledge of its
21 infringement of the Asserted Patents based on its awareness of the patent infringement
22 suits filed by Entropic against Charter in the Eastern District of Texas, Case No. 2:22-
23 CV-00125-JRG and Case No. 2:23-CV-00052-JRG.⁴ SAC ¶¶ 71–72. These suits
24 involved infringement by largely the same technology at issue in this action—and
25 Entropic has specifically alleged that Comcast infringes the asserted patents in
26 substantially the same manner as Charter—indeed, for many of the asserted patents, in

27
28 ⁴ In Case No. 2:22-CV-00125-JRG, Entropic asserted the ’775, ’690, ’008, ’362, ’826,
and ’682 Patents. In Case No. 23-CV-00052-JRG, Entropic asserted the ’866, ’206,
’775, and ’438 Patents.

1 *identical* manner because Comcast and Charter use common suppliers (and identical
2 products) for cable modems and set-top boxes. SAC ¶¶ 75–77, 82–84. Entropic also
3 alleges that Charter and Comcast closely collaborate to develop new technology and
4 programs to drive the industry forward through organizations like MoCA and the
5 Society of Cable Telecommunications Engineers—and even are involved in joint
6 business ventures. *Id.* ¶¶ 73, 79. Entropic further alleges that Comcast and Charter have
7 monthly meetings together and have specifically collaborated on accused technologies.
8 *Id.* ¶ 74. Finally, Entropic alleges that Charter and Comcast have frequently teamed up
9 to offer streaming devices and technologies to customers, which evidences Comcast’s
10 knowledge that Charter offers technology that functions almost identically to Comcast’s
11 technology. *Id.* ¶¶ 80–81. Thus, as in *Core Optical*, Entropic identifies two prior
12 lawsuits “concerning the same patent in a tight-knit industry.” 562 F. Supp. 3d at 381
13 (emphasis added); SAC ¶¶ 71–73.

14 Based on this relationship and close collaboration, Entropic alleges that Comcast
15 “analyzed its own products’ functionality in light of the patents asserted against Charter,
16 and it confirmed that its own products were functionally identical to the Charter
17 products accused.” *Id.* ¶ 87. Indeed, Entropic even alleges that Comcast sought
18 indemnification from its suppliers for each of the patents asserted against Charter,
19 including the MoCA-related patents, ***before Entropic had filed suit against Comcast.***
20 *Id.* ¶ 93. Comcast also contacted RPX Corporation, of which Comcast is a member,
21 about Entropic’s patent infringement claims in the Charter, Dish, and DirecTV lawsuits
22 again ***before Entropic had filed suit against Comcast.*** *Id.* ¶ 97. RPX’s entire stated
23 purpose is to “reduce patent risk in the most direct way possible: we remove patents—
24 pre-litigation and out of active litigation—before they can become a costly problem for
25 our clients” a method which RPX advertises has “proven that competitors can
26 successfully collaborate to fight an expensive industry-wide problem.”
27 <https://www.rpxcorp.com/platform/rpx-network/>. These specifically-alleged facts
28 alone conclusively allege willful patent infringement and that Comcast fully anticipated

1 a lawsuit from Entropic after having reviewed and analyzed the allegations of patent
2 infringement in the Charter litigation. But in sum, Entropic’s SAC contains detailed
3 factual allegations regarding the close collaboration of Comcast and Charter within the
4 cable industry, Comcast’s specific knowledge of how Charter’s accused products
5 operate, and that Comcast was aware of, and substantively analyzed, the infringement
6 allegations in the Charter litigation and determined that it infringed the same Asserted
7 Patents in the manner alleged in the SAC. SAC ¶¶ 71–94. These allegations plausibly
8 allege that Comcast would have known of the lawsuit against Charter and would have
9 taken steps to analyze the patent infringement claims therein.

10 Comcast attempts to sidestep these voluminous factual allegations by arguing
11 that “Entropic does not and cannot allege that **Charter** ever told Comcast about the
12 patent or alleged infringement.” Opp. at 30:8–10 (emphasis added). That is irrelevant—
13 instead, all that is required for willful patent infringement is knowledge of the asserted
14 patents and knowledge of infringement, both of which Entropic has alleged. *Arctic Cat*
15 *Inc.*, 876 F.3d at 1371. That the specific facts in *Core Optical* included the prior
16 defendant informing another defendant of the patents does not transform that court’s
17 holding into a rule that the defendant in the prior lawsuit itself must have provided the
18 knowledge. Here, like in *Core Optical*, Entropic has provided ample factual allegations
19 that Comcast plausibly reviewed and analyzed the Charter litigation claims, and
20 determined that it infringed, due to the close collaboration between Comcast and
21 Charter and their knowing use of common products and technology. SAC ¶¶ 71–94;
22 *Core Optical*, 562 F. Supp. 3d at 381. Entropic’s SAC alleges that Comcast knew of the
23 Charter litigation and the asserted patents, knew its products and technology are
24 substantially similar or identical to the accused products and technology of Charter, and
25 Comcast knew that it infringed the Asserted Patents in the same manner as described in
26 the Charter litigation. SAC ¶¶ 71–94. Despite this, and despite knowingly continuing to
27 infringe, Comcast’s view is that it cannot be liable for willful patent infringement unless
28

1 Charter itself specifically called Comcast up to tell them about the lawsuit. That position
2 is absurd and also has no basis in law.

3 Crucially, the law also recognizes that at the pleading stage, without *any*
4 discovery, a plaintiff is not required to plead a smoking gun. *Sonos, Inc.*, 591 F. Supp.
5 3d at 644–45. The facts underlying willfulness allegations must be considered as a
6 whole, within their total context. *Graco, Inc.*, 60 F.3d at 792. Here, Entropic has
7 included considerable additional factual allegations that add to the plausibility of
8 Comcast’s willful patent infringement, including after the prior Entropic litigations
9 were filed. *See, e.g.*, SAC ¶¶ 98–115, 143–55. Comcast and (the prior patent owner)
10 MaxLinear are not strangers—they have a lengthy history. *Id.* ¶ 143. MaxLinear
11 supplied Comcast large volumes of product—indeed, the software maintenance of such
12 products is the subject of the very VSA in dispute. *See generally* VSA. Furthermore,
13 Comcast hired the named inventor of the ’008 and ’826 Patents, Patrick Tierney, which
14 included Comcast reviewing those patents during the hiring process of Mr. Tierney,
15 SAC ¶ 98, as well as a close relationship as supplier/customer for at least 15 years, *id.*
16 ¶ 143, and joint participation in industry groups such as MoCA, *id.* ¶ 144. Additionally,
17 Mr. Tierney and other MaxLinear employees frequently met with Comcast and
18 discussed the technologies of both MaxLinear and Entropic Communications Inc. that
19 practiced the Non-SEP Patents, and discussed MaxLinear’s patent portfolio, *id.* ¶¶ 98–
20 99. Comcast’s own patents also cite MaxLinear’s patents, including parents to the
21 asserted ’682 Patent. *Id.* ¶¶ 119–21. The totality of the allegations must be considered,
22 not dissembled into individual pieces to be rejected one-by-one.

23 The Comcast-MaxLinear relationship and frequent intra-industry discussions of
24 the capabilities of MaxLinear’s products it offered or provided to Comcast, the
25 allegations concerning the Charter litigation, the close Comcast/Charter relationship,
26 and Comcast’s knowledge of the Charter litigation and its substantially identical
27 infringement—all of these allegations in concert are more than sufficient allegations
28 that Comcast had knowledge of the Asserted Patents, had knowledge of its infringement

1 (or a high risk thereof), and that Comcast nonetheless continued to infringe. SAC ¶¶
2 182-85. For example, Comcast’s long history with Entropic Inc. and MaxLinear, as
3 suppliers and industry players, multiplies the plausibility that Comcast would have
4 noticed and reviewed a lawsuit filed by a company named “Entropic,” MaxLinear’s
5 successor-in-interest to the patents. *Id.* ¶¶ 98–115, 143–55 These allegations must be
6 considered as a whole, and taken together amply clear pleading standards.

7 **3. The allegations related to Comcast’s investment in Entropic Inc.**
8 **and participation in MoCA are sufficient to plead Comcast’s**
9 **willful infringement.**

10 Comcast argues that Entropic’s allegations about Comcast’s investment in
11 Entropic Inc. and Comcast’s involvement in MoCA are insufficient to establish that
12 Comcast had knowledge of the filing of the Asserted Patents. Opp. at 34:17–35:6.
13 Comcast argues that these allegations establish only that Comcast would have been
14 aware of a “patent portfolio” or “patent applications,” but not the Asserted Patents
15 themselves. *Id.* To the contrary, the SAC alleges that Comcast was an “early and active
16 member of MoCA” who “helped to develop the MoCA standard.” SAC ¶ 129. Comcast
17 thus would have *needed* to be aware of the patented technology that would be essential
18 to the practice of the MoCA standard. *See, e.g., Microsoft Corp. v. Motorola, Inc.*, 864
19 F. Supp. 2d 1023, 1027 (W.D. Wash. 2012) (explaining the need for members of
20 standards setting organizations to identify patents that are essential to the proposed
21 standard). The SAC then identifies six specific patents that were filed during the time
22 that MoCA was being developed by Comcast and others. SAC ¶ 132. The SAC
23 specifies that these patents are essential to the practice of MoCA. *Id.* Based on
24 Comcast’s heavy involvement in the development of the MoCA standard, it is therefore
25 more likely than not that Comcast was aware of these patents and tracked them through
26 issuance.

27 Comcast then takes issue with Entropic’s allegations regarding an email sent by
28 Anton Monk to the MoCA Board of Directors that specifically identifies Entropic Inc.’s

1 ownership of the '518 Patent and states that the '518 Patent is essential to the practice
2 of MoCA. *Id.* ¶¶ 137–40. [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] Opp. at 35:14–36:11.

7 None of these arguments are persuasive.

8 First, Entropic does not need to allege which specific Comcast employee received
9 the email in order to plausibly allege that Comcast was put on notice of its infringement.
10 Indeed, “[i]t is well established that corporations act through their employees and an
11 agent’s knowledge will generally be imputed to the corporate principal so long as
12 employees are acting within the scope of their employment.” *Potter Voice Techs., LLC*
13 *v. Apple Inc.*, 24 F. Supp. 3d 882, 886 (N.D. Cal. 2014); *see also i4i Ltd. P’ship*, 598
14 F.3d at 860 (finding substantial evidence supporting a finding of willful infringement
15 where defendant company’s employees received plaintiff’s sales kit citing the asserted
16 patent and went to plaintiff’s software demonstrations). Here, the SAC alleges that
17 Monk’s email was sent to MoCA Board of Directors, and “Comcast was a member of
18 the Board at the time and therefore *received this notice from Entropic*.” SAC ¶¶ 138–
19 39. This is sufficient to plausibly allege that the Comcast employees involved in MoCA
20 and the development of the infringing technology were put on notice of the '518 Patent.

21 Second, Entropic’s allegations are not insufficient simply because they do not
22 specify a version of MoCA or identify specific products that practice the '518 Patent.
23 Monk’s email put MoCA Board members on notice that any technology practicing
24 MoCA would infringe the '518 Patent. *Id.* ¶¶ 137–40. The SAC establishes that Comcast
25 was involved in the development of the standard, and that Comcast was in the process
26 of developing its own technology essential to the practice of the MoCA standard during
27 this same time. *Id.* ¶¶ 129–42. Comcast subsequently practiced the MoCA standard (and
28 continues to do so). *Id.* ¶¶ 129–35. Comcast therefore had knowledge of a high risk that

1 its use of MoCA infringed the '518 Patent. Third, Comcast's argument that this
2 allegation should be ignored simply because it was sent 15 years ago fails for this same
3 reason—this email put Comcast on notice of its infringement at the time, and that
4 knowledge persists. Moreover, the SAC alleges that Comcast "continued to monitor and
5 analyze Entropic's MoCA-related patents and was aware of later-filed patents that are
6 standard-essential to MoCA simply due to the importance of MoCA to Comcast's
7 business and Comcast's later involvement as a board member of the MoCA." *Id.* ¶ 134.

8 At the very least, these allegations establish that Comcast was willfully blind to
9 its infringement of the '518 Patent and the '759 Patent, which is a continuation of the
10 '518 Patent. *See Corephotonics, Ltd.*, 2018 WL 4772340, at *9 (N.D. Cal. Oct. 1, 2018)
11 (allegations created inference that defendant "was at least willfully blind to a high risk
12 that it was infringing [plaintiff's] patents" where defendant purposefully neglected to
13 investigate plaintiff's patents to avoid confirming that it was infringing the asserted
14 patents). Thus, Entropic's allegations regarding Comcast's involvement in MoCA are
15 sufficient to establish Comcast has willfully infringed the Asserted Patents.

16 **B.** [REDACTED]
17 [REDACTED]

18 Setting aside issues under Rule 12(b)(6), if the Court grants Entropic's motion to
19 file its supplemental pleading under Rule 15(d), this Court indisputably has subject
20 matter jurisdiction over the claims in the supplemental pleading and Comcast's motion
21 under Rule 12(b)(1) should be denied. Comcast's arguments under Rule 12(b)(1) all
22 stem from an alleged license defense contained in the VSA. As a threshold matter,
23 binding authority mandates that Comcast's 12(b)(1) motion fail, which holds that a
24 federal court has subject matter jurisdiction over a patent infringement claim and that
25 jurisdiction cannot be defeated by a contractual license (or covenant not to sue) defense,
26 regardless of the merits of the defense. *Air Products*, 755 F.2d at 1563–64; *Pixton*, 291
27 F.3d at 1327. [REDACTED]
28 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See YellowCake, Inc. v. DashGo, Inc.*, 2022 WL 172934, at *6 (E.D. Cal. Jan. 19, 2022) (taking as true allegations that a contract was validly terminated for purposes of a motion to dismiss); *ViX Swimwear, Inc. v. SBC Clothing, Inc.*, 2015 WL 3905097, at *7 (S.D. Cal. June 25, 2015) (taking as true allegation that contract was terminated pursuant to its terms). And Rule 15(d) specifically permits subject matter jurisdiction to be cured through post-complaint facts alleged in a supplemental pleading. *Northstar Fin. Advisors Inc. v. Schwab Invs.*, 779 F.3d 1036, 1044 (9th Cir. 2015) (“Rule 15(d) permits a supplemental pleading to correct a defective complaint” and while Rule 15(d) “is phrased in terms of correcting a deficient statement of ‘claim’ or a ‘defense,’ a lack of subject-matter jurisdiction should be treated like any other defect for purposes of defining the proper scope of supplemental pleading.”) (quoting Wright & Miller, Fed. Prac. & Proc. 3d § 1505). This Court therefore has subject matter jurisdiction over the supplemental pleading, and should deny Comcast’s motion under Rule 12(b)(1) for this reason alone.

IV. CONCLUSION

Based on the foregoing, Entropic requests the Court grant this motion. If the Court finds that dismissal is appropriate, Entropic respectfully requests leave to amend

1 to further refine its allegations of Comcast's willful infringement of the Asserted
2 Patents.

3
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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Entropic Communications, LLC, certifies that this brief contains 6,054 words, which complies with the word limit of L.R. 11-6.1.

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